

Message Text

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ACTION EUR-25

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EO 11652 N/A

TAGS: PGOV, WB, GW, GE

SUBJECT: BERLIN COURT APPROVES EXTRADITION OF BRUECKMANN TO GDR

REF: A) BERLIN 1189 (NOTAL); B) BERLIN 1129 (NOTAL)

1. SUMMARY: WEST BERLIN'S HIGHEST COURT, THE KAMMERGERICHT, CONFIRMED ON AUGUST 10 EARLIER DECISION OF PUBLIC PROSECUTOR TO TURN OVER TO GDR FOR TRIAL 17-YEAR OLD INGRID BRUECKMANN, WHO HAS ADMITTED KILLING FATHER IN GDR BEFORE FLEEING TO WEST BERLIN. WHILE KAMMERGERICHT DECISION IS, UNDER TERMS OF 1953 FRG LAW ON INNER-GERMAN JUDICIAL AND OFFICIAL ASSISTANCE IN CRIMINAL CASES, NOT APPEALABLE TO HIGHER GERMAN COURT, KAMMERGERICHT HAS INDICATED THAT BRUECKMANN'S LAWYER MAY FILE APPEAL TO EUROPEAN COMMISSION OF HUMAN RIGHTS IN STRASBOURG, LAWYER HAS CONFIRMED HE WILL DO SO, AND PUBLIC PROSECUTOR HAS SAID THAT GRIL WILL REMAIN IN WEST BERLIN UNTIL EUROPEAN COMMISSION HAS ACTED. IT IS LIKELY THAT MATTER COULD

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DRAG ON IN STRASBOURG FOR MONTH, BUT SENAT OFFICIALS BELIEVE THAT

KAMMARAGERICHT DECISION WILL EVENTUALLY PREVAIL. END SUMMARY

2. AS REPORTED REF A, BRUECKMANN EXTRADITION HAD BEEN DELAYED INDEFINITELY BY PROPOSAL OF PUBLIC PROSECUTOR THAT PSYCHOLOGICAL STUDY BE MADE TO DETERMINE IF GIRL WAS LIKELY TO SUFFER PERMANENT MENTAL DAMAGE IF SHE WAS RETURNED TO GDR DESPITE FACT THAT GDR HAS ASSURED SENAT THAT SHE WILL BE TRIED ONLY FOR KILLING OF FATHER, NOT FOR FLEEING GDR; WILL RECIEVE NO MORE THAN 10-YEAR SENTENCE; AND WILL BE ALLOWED TO RETURN TO WEST BERLIN IF SHE IS ACQUITTED OR WHEN SHE COMPLETES SENTENCE. MANY OBSERVERS FELT THAT PUBLIC PROSECUTOR OR COURT WOULD SEIZE ON RESULTS OF PSYCHOLOGICAL EXAMINATION TO REFUSE EXTRADITION WHICH HAS EVOKED CONSIDERABLE CONTROVERSY IN WEST BERLIN AND IN FRG MEDIA. COURT DID NOT, HOWEVER, REFER TO PSYCHOLOGICAL STUDY IN DECISION AND ALSO GAVE NO CREDIT TO DEFENSE LAWYER'S CONTENTION THAT FRG-GDR BASIC TREATY HAS NULLIFIED 1953 FRG LAW AND THAT BRUECKMANN EXTRADITION 'WHICH LAW REFERS TO AS INNER-GERMAN "ZULIEFERUNG" RATHER THAN "AUSLIEFERUNG") IS THEREFORE UNCONSTITUTIONAL BECAUSE GERMANS MAY NOT NORMALLY BE EXTRADITED TO FOREIGN COUNTRY WITHOUT BENEFIT OF EXTRADITION TREATY.

3. BRUECKMANN'S LAWYER HAS CONFIRMED THAT HE WILL FILE APPEAL TO EUROPEAN COMMISSION ALLEGING THAT EXTRADITION WOULD CONSTITUTE BASIC VIOLATION OF RIGHTS GUARANTEED HIS CLIENT UNDER CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS. THAT CONVENTION PROVIDES THAT INDIVIDUAL MAY FILE APPEAL WITH COMMISSION AND COMMISSION, IF IT FEELS COMPLAINT SO WARRANTS, MAY REFER MATTER TO EUROPEAN COURT OF HUMAN RIGHTS. FRG ACCEPTED COMPULSORY JURISDICTION OF COURT OF HUMAN RIGHTS IN 1971 AND, SINCE CONVENTION PROVIDES COURT MAY MAKE BINDING DECISION, THEORETICAL POSSIBILITY EXISTS THAT KAMMERGERICHT DECISION COULD BE OVERRULED.

4. SENAT CIRCLES, HOWEVER, BELIEVE THAT THERE IS VIRTUALLY NO CHANCE (AS WELL AS NO PRECEDENT) THAT EUROPEAN COURT WILL OVERTURN KAMMERGERICHT DECISION, AND, LIMITED OFFICIAL USE

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ON BASIS OF PRELIMINARY REVIEW OF GENERAL PROVISIONS OF CONVENTION, WE ARE INCLINED TO AGREE. BY RETAINING BRUECKMANN IN WEST BERLIN PENDING FURTHER ACTION IN STRASBOURG, HOWEVER, SENAT MAY BE ABLE TO DEFLECT SOME OF POLITICAL CONTROVERSY SWIRLING AROUND CASE. THUS, IF COMMISSION OR COURT REFUSE TO DISTURB KAMMERGERICHT DECISION, SENAT COULD EXPLAIN TO OPPONENTS OF EXTRADITION THAT DECISION WAS IN EFFECT RATIFIED BY EUROPEAN

INSTITUTIONS, ON THE OTHER HAND, IF COURT SHOULD REVERSE DECISION, SENAT COULD IN TURN EXPLAIN TO GDR THAT IT HAD WISHED TO COOPERATE BUT FOUND ITS HANDS TIED BY STRASBOURG COURT.

5. DEPENDING UPON REACTION OF COMMISSION TO APPEAL, MATTER COULD DRAG ON IN STRASBOURG FOR MANY MONTHS. IN MEANTIME THERE IS NO SLACKENING OF INTEREST IN WEST BERLIN MEDIA WHICH REPORT THAT, DESPITE PUBLIC PROSECUTOR'S ASSURANCE THAT MARRIAGE WOULD HAVE NO EFFECT ON EXTRADITION, BRUECKMANN HAS RECEIVED DOZENS OF PROPOSALS FROM FRG CITIZENS WHO WISH TO PREVENT HER RETURN TO GDR. ON MORE SERIOUS NOTE, AUGUST 12 HIJACKING SCARE AT TEMPELHOF (BERLIN 1382) WAS SET OFF BY ANONYMOUS PHONE CALL TO NORTH GERMAN TV NETWORK IN HAMBURG THAT BERLIN-HAMBURG FLIGHT WOULD BE HIJACKED UNLESS "THE GIRL STAYS IN BERLIN".KLEIN

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